

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:	Pahl, et al.)	ATTORNEY DOCKET:	04266864
)		
SERIAL NO.:	10/828,650)	GROUP ART UNIT:	1624
)		
FILED:	April 21, 2004)	EXAMINER:	Susanna Moore
)		
TITLE:	4-(4-TRANS-HYDROXYCYCLOHEXYL) AMINO-2-PHENYL-7H-PYRROLO [2,3D] PYRIMIDINE HYDROGEN MESYLATE, ITS POLYMORPHIC FORMS, AND METHODS FOR MAKING SAME			
DATE:	December 7, 2007			

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT

This Application for Patent Term Adjustment is being filed pursuant to 35 U.S.C. § 154(b) and 37 C.F.R. §§ 1.702-1.705 and requests that an additional 100 days of patent term adjustment be granted in addition to the 477 days provided in the Notice of Allowance mailed on September 10, 2007. Enclosed herewith is the fee (\$200.00) set forth in 37 C.F.R. § 1.18(e) and the statement of facts supporting this Application for Patent Term Adjustment as required by 37 C.F.R. § 1.705(b)(2).

Applicants respectfully request that the patent term for the patent to be granted on allowed application 11/828,650 be adjusted from 477 days to 577 days as explained herein. If additional fees for this Application for Patent Term Adjustment are required, the USPTO is hereby authorized to charge Deposit Account No. 13-0019. To the extent that there has been any over-payment of fees associated with this Application for Patent Term Adjustment, the USPTO is hereby authorized to refund any such over-payment to Deposit Account No. 13-0019.

STATEMENT OF FACTS UNDER 37 C.F.R. § 1.705(b)(2)

Pursuant to 37 C.F.R. § 1.705(b)(2) Applicants respectfully submit the following Statement of Facts in support of their Application for Patent Term Adjustment. Applicants hereby request that an additional 100 days of patent term adjustment be granted in addition to the 477 days of patent term adjustment previously granted in the Notice of Allowance mailed on September 10, 2007. The requested 100 additional days are the number of days between April 22, 2007 (the day after three years from the application's filing date) and July 30, 2007 (the filing of an RCE). The Applicants are entitled to this additional patent term adjustment pursuant under 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. §§ 1.702(b) and 1.703(b)(1).

As required by 37 C.F.R. § 1.705(b)(1), the fee in an amount of \$200.00 as set forth in § 1.18(e) has been paid herewith.

Pursuant to 37 C.F.R. § 1.705(b)(2), Applicants respectfully submit that the correct patent term adjustment should be 577 days and not 477 days as set forth in the Notice of Allowance. The bases for this Adjustment are as follows: 477 days pursuant to § 1.702(a)(1) and an additional 100 days pursuant to § 1.703(b)(1).

With respect to the 477-day adjustment period, § 1.702(a)(1) states that at least one of either a notification under 35 U.S.C. § 132 or a Notice of Allowance will be mailed within 14 months after filing of the application. The current application was filed on April 21, 2004; therefore, either a notification under 35 U.S.C. § 132 or a Notice of Allowance had to have been mailed by June 21, 2005. The first notification under 35 U.S.C. § 132 (the first Office Action) was mailed on October 11, 2006. Thus, pursuant to § 1.703(a)(1), the Applicants are entitled to a patent term adjustment of a period equal to the number of days between June 22, 2005 (the day after 14 months from the filing of the application) and October 11, 2006. This period of time is equal to 477 days (see the attached determination of the number of days) and was correctly calculated by the USPTO in the Notice of Allowance.

However, Applicants are entitled to an additional 100 days of patent term adjustment pursuant to § 1.703(b)(1). Section 1.702(b) states that the term of a patent shall be adjusted if its issuance was delayed due to the failure of the USPTO to issue the patent within three years after filing of the application. However, under § 1.703(b)(1) the amount of patent term adjustment based upon the USPTO's failure to issue a patent within three years excludes the amount of time between the filing of an RCE and the issue date of the patent. Since the period between the filing

of an RCE and the issue date is excluded under § 1.703(b)(1), the amount of adjustment pursuant to § 1.702(b) can be determined independent of the issue date for the present application as an RCE was filed on July 30, 2007. Thus, Applicants are entitled an additional patent term adjustment under §§ 1.702(b) and 1.703(b)(1) equal to the number of days between (i) the day after three years from the filing of the application; and (ii) the filing of the RCE. The present application was filed on April 21, 2004; therefore, the day after three years from the filing date is April 22, 2007. Additionally, an RCE was filed in the present application on July 30, 2007. Thus, pursuant to § 1.703(b)(1), Applicants are entitled to a patent term adjustment of a period equal to the number of days between April 22, 2007 and July 30, 2007. This period of time is equal to 100 days (see the attached determination of the number of days). This additional patent term adjustment of 100 days was not included in the 477 days of patent term adjustment stated in the Notice of Allowance. Applicants respectfully request that the patent granted on the present application be granted the additional 100 days of patent term adjustment pursuant to §§ 1.702(b) and 1.703(b)(1) in addition to the 477 days of patent term adjustment granted in the Notice of Allowance under § 1.702(a)(1). Thus, pursuant to § 1.703(f), the present application is entitled to a total of 577 days of patent term adjustment.

A summary of the relevant dates is as follows:

Application filing Date:	April 21, 2004
Application filing Date + 14 months:	June 21, 2005
Date of first Office Action:	October 11, 2006
Filing Date + 3 years:	April 21, 2007
RCE filing date:	July 30, 2007
Patent Issue Date:	TBD

Adjustment Period	Number of Days	37 CFR
June 22, 2005 to October 11, 2006	477	§§ 1.702(a)(1) and 1.703(a)(1)
April 22, 2007 to July 30, 2007	100	§§ 1.702(b) and 1.703(b)(1)

TOTAL 577 days

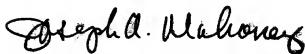
Pursuant to § 1.705(b)(2)(iii), Applicants submit that the present application is not subject to a terminal disclaimer.

Pursuant to § 1.705(b)(2)(iv)(B), Applicants submit that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the present application as set forth in § 1.704.

In the event that the Office views this Application for Patent Term Adjustment under § 1.705(b) as a premature request for patent term adjustment under § 1.705(d), Applicant hereby reserves the right to resubmit the foregoing arguments after grant of the patent and any other arguments in support of a patent term adjustment. Additionally, Applicants do not waive any other bases for patent term adjustment to which they may be entitled under § 1.705(d).

Applicants submit that in view of the foregoing, the present application is entitled to an additional 100 days of patent term adjustment beyond the 477 days to which the Office has already determined the present application is entitled. If, in the opinion of the Office, a telephone conference would help expedite the present Application for Patent Term Adjustment, the Office is invited to call the undersigned attorney.

Respectfully submitted,



By:

Joseph A. Mahoney
Reg. No. 38,956

CUSTOMER NUMBER 26565
MAYER, BROWN, ROWE & MAW LLP
P.O. Box 2828
Chicago, IL 60690-2828
Telephone: (312) 701-8979
Telephone: (312) 782-0600

Dated: December 7, 2007

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Duration calculation results

From and including: **Wednesday, June 22, 2005**

To and including: **Wednesday, October 11, 2006**

It is **477** days from the start date to the end date, end date included

Or 1 year, 3 months, 20 days including the end date

Alternative time units

477 days can be converted to one of these units:

- 41,212,800 seconds
- 686,880 minutes
- 11,448 hours
- 68 weeks (rounded down)

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Duration calculation results

From and including: **Sunday, April 22, 2007**

To and including: **Monday, July 30, 2007**

It is **100** days from the start date to the end date, end date included

Or 3 months, 9 days including the end date

Alternative time units

100 days can be converted to one of these units:

- 8,640,000 seconds
- 144,000 minutes
- 2400 hours
- 14 weeks (rounded down)

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